

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LEXINGTON INSURANCE CO.,  
Plaintiff,

v.

SANDRA SWANSON,  
Defendant.

No. C05-1614MJP

ORDER GRANTING LEAVE TO  
FILE LATE DISCOVERY MOTION  
AND GRANTING IN PART AND  
DENYING IN PART MOTION TO  
COMPEL

This matter comes before the Court on Plaintiff Lexington's motion for leave to file a late discovery motion and motion to compel. (Dkt. No. 258.) Lexington seeks to compel Defendant Swanson to produce documents responsive to Lexington's Request for Production No. 10. Swanson opposes the motion. (Dkt. No. 283.) Having considered the motion and response, Lexington's reply (Dkt. No. 286), all documents submitted in support thereof and the record herein, the Court GRANTS leave to file a late discovery motion and GRANTS IN PART and DENIES IN PART Lexington's motion to compel.

On April 23, 2007, Swanson answered Lexington's second set of Interrogatories and Requests for Production ("RFP"). Lexington's motion focuses on FRP No. 10:

REQUEST FOR PRODUCTION NO. 10: Please produce all communications, including notes regarding oral communications, from Swanson or her counsel to any defendant or counsel of any defendant regarding settlement in the lawsuit captioned *Swanson v. Issaquah Care Center LLC et al* King County Superior Court Case No. 03-2-20442-1.

RESPONSE: Objection to the extent this request may seek work product concerning any oral communications not recorded contemporaneous. Subject to that objection, many of the documents have already been produced through production and subpoena

duces tecum directed to ICC and Haelen. If documents regarding Vencor, Group Health or other defendants are at issue, Swanson will make available those as well as duplicate copies of other documents previously produced relating to ICC and Haelen.

(Neal Decl., Ex. 2) (emphasis added). Lexington's motion focuses on the documents "regarding Vencor, Group Health or other defendants" that Swanson stated she would "make available." Swanson has never produced those documents. (Neal Decl. ¶ 2.)

On May 15, 2007, the Court issued an order striking a Lexington CR 37 submission (Dkt. No. 175) in which Lexington sought production of certain documents, including those documents responsive to RFP No. 10 which had been withheld on the basis of work product privilege. (See Dkt. No. 166.) The Court struck the submission because Lexington had failed to confer before bringing the motion. The Court noted that Lexington was precluded from re-filing its submission by the discovery motions deadline.

Swanson argues that the current motion is precluded by the Court's previous order. To the extent that the current motion seeks access to the documents withheld on the basis of work product privilege at issue in the Court's prior order, the motion is precluded and is DENIED. But to the extent that the current motion seeks only those documents that Swanson promised she would make available, the motion is GRANTED. Swanson cannot now withhold documents that she previously stated she would provide. Therefore, Swanson is ordered to produce within five (5) calendar days those documents "regarding Vencor, Group Health or other defendants" that Swanson promised to produce in response to RFP No. 10.

For these reasons, the motion for leave to file a late discovery motion is GRANTED and the motion to compel is GRANTED IN PART and DENIED IN PART. Swanson's request for terms is DENIED.

The Clerk is directed to send copies of this order to all counsel of record.

Dated: August 15<sup>th</sup>, 2007.



Marsha J. Pechman  
United States District Judge